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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re K.B., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

B291259

(Los Angeles County
Super. Ct. No. 18CCJP02140)

APPEAL from orders of the Superior Court of Los Angeles County. Emma Castro, Juvenile Court Referee. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Janette Freeman Cochran, under appointment by the Court of Appeal, for the Minor.

D.B. (father) challenges two juvenile court dispositional orders: (1) A mutual stay away order as to both parents, father and G.G. (mother); and (2) An order prohibiting telephone calls between father and K.B. (born June 2010).

We conclude that the trial court did not err in issuing these orders. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prior child welfare history

Mother and father have known each other since 2009; they never married. They lived together as a family until K.B. was about one-year-old (around 2011).

The family has a prior child welfare history, beginning in 2012 based upon the parents' violent altercations.

On May 10, 2017, the family law court issued a restraining order, restraining mother and protecting father.

In August 2017, father and mother were awarded joint physical custody of K.B, with K.B. splitting time between father's home and mother's home.

Instant referral and removal order

On January 4, 2018, a referral was made to the Department of Children and Family Service (DCFS) based upon allegations of physical abuse of K.B. by father. The reporting party stated that father had anger issues; mother felt that DCFS would not do anything about father hitting K.B. and she did not want to report anything to DCFS.

Father's statements

The social worker interviewed father on January 10, 2018. He denied the physical abuse allegations. He believed that mother had coached K.B. into making such statements. He said that he disciplined K.B. by having the child put his arms out for

less than 30 seconds. Frustrated and disturbed by another open investigation, father was sarcastic, very short, or nonresponsive.

First interview with K.B.

The social worker spoke to K.B., then age seven, at school. K.B. said that father had hit him with a belt, slapped him hard with his hand, thrown a pen at him, and punched him. Recently, his punishment consisted of holding his arms out for five minutes and getting slapped if he put them down earlier. Father used his middle finger and thumb to flick K.B. on parts of his body, including his face and arms. K.B. became scared when father was angry and going to hit him.

Interview with prior school director

The social worker also interviewed the director of K.B.'s previous school; the director had reported incidents of mother and father arguing at school. Eventually K.B. was dismissed from the school because of the parents' disruption.

Interview with mother

Mother was upset and frantic when she learned of an open DCFS investigation into allegations of physical abuse. During their interview, mother told the social worker that she had lied to the prior social worker because father scared her into thinking that if she told the truth, father would go to jail and K.B. would go to foster care. Mother stated that father had manipulated her and was "gas lighting" her, meaning that he was psychologically manipulating the situation and causing mother to question herself.

Mother believed that the last incident of physical abuse had occurred around Thanksgiving 2017, when father grabbed K.B. by his shirt and pulled him off the ice skating rink, causing K.B. to fall. Mother reported prior incidents of physical abuse to the

social worker: (1) In June 2017, K.B. came back from father's home "rattled," when father took out a belt and scared K.B. that he could get whipped with it. (2) In April 2016, father and mother were at the park with K.B., and father smacked K.B. on the back of his head and dragged him by his shirt. Someone witnessed the incident and called law enforcement. The entire family was detained at the police station. Mother said that father pleaded with her and K.B. to "protect him" and "lie" about the incident.

Mother also stated that father used to manipulate and emotionally abuse her. Now that she did not have contact with him, she felt that father was emotionally abusing K.B. K.B. often said that if he did not listen to father, father would hit, punch, or kill him.

Mother explained the circumstances of the May 10, 2017, family law restraining order that father had obtained after she allegedly "barged" into his home looking for K.B. On April 8, 2017 mother became frantic when father did not return her telephone calls or text messages during K.B.'s visit with father. She did not break into the home; rather, she followed an attorney walking into father's home and was confused because the attorney wanted to interview K.B. for his half-sibling's court case. Mother now knows that she should have called law enforcement for help retrieving K.B. from father but she was so upset that she did not think about it.

Second interview with K.B.

The social worker interviewed K.B. again on January 12, 2018. When she asked about the ice skating incident, K.B. stated that his father got mad, held onto K.B.'s shirt, and pulled him off the ice. Although father told K.B. that he would not put his

hands on him anymore, K.B. said that he was scared of what would happen next. K.B. then said, “I can’t talk to you because daddy told me not to bring up any of that.” K.B. believed that if he said anything, he would get in “big trouble, this time it’s going to be bad.” K.B. began crying in fear and stated that he did not want to talk to the social worker any more.

Statements by K.B.’s paternal grandmother

Later that day, the social worker spoke with K.B.’s paternal grandmother, who reported that she had concerns for K.B.’s safety when he was with father. She saw father at the Thanksgiving ice skating incident, when father walked to K.B., “yanked” his collar, and dragged him off the ice. She saw K.B. scared and sad; she told father that his behavior was unacceptable. The paternal grandmother said that father tried to bully and control everyone. She had not spoken to father since Thanksgiving because of the incident with K.B.

Removal from father

On March 29, 2018, DCFS obtained an order removing K.B. from father. Father was “very upset” and made numerous calls to the social worker. At one point, father asked the social worker what would happen to K.B. if mother were arrested, because he was going to have her arrested for violating the restraining order.

Petition and detention hearing

On April 3, 2018, while K.B. was living with mother, DCFS filed a petition on K.B.’s behalf pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).¹ The

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

petition alleged physical abuse of K.B. by father, mother's failure to protect, and father's alcohol use.

At the detention hearing on April 4, 2018, the parents denied the petition's allegations. The juvenile court found a prima facie case for detaining K.B. under section 300 and removed him from father's custody, but released him to mother under DCFS supervision.

Jurisdiction/Disposition Report

Mother's statements

When interviewed at her home on April 26, 2018, mother raised the issue of a restraining order: "The restraining order is good for K.B. because we [mother and father] don't get along and K.B. doesn't need that." Father has a "pattern of antagonizing, gas lighting and manipulating behavior." Mother had been in therapy with a private therapist and anger management for a year, both of which had been helpful.

Mother reported that before K.B.'s birth, father was abusive to her.

Mother learned from the detention report that K.B. hid under the covers when he was scared of father. She should have spoken up sooner, but she did not do so because she was afraid. She informed the social worker that she was "not scared anymore."

Regarding father's telephone calls, mother said that she placed the call on speaker phone; father was manipulative and critical of what K.B. had been doing. Some days, the phone calls were okay; other days, father made controlling, manipulative, and bullying remarks.

Father's statements

On April 24, 2018, father stated that he did not need anger management, substance abuse, or coparenting classes; Project Fatherhood² was enough. He had “zero” relationship with mother. “There will never be a time when we’ll be friends or friendly with each other because of the language that she used.”

Social worker's assessment

The social worker assessed the parents' relationship as “very contentious and volatile.” DCFS had concerns for K.B.'s well-being given his parents' relationship.

Jurisdiction and disposition hearing

The juvenile court held a contested jurisdiction hearing on June 19, 2018.

K.B.'s testimony

K.B., then age eight, testified in chambers. The juvenile court found him to be a competent witness to provide testimony.

When a social worker interviewed K.B. at school in January 2018, K.B. said that father hit him in the head with an open hand and punched him in the face in November 2017. K.B. could not remember why father had hit him, but it hurt and K.B. cried and fell down. Another time, when he was three years old or younger, father hit him in the head.

At one of his visits at the social worker's office, father “flick[ed]” K.B.'s shoulder, which hurt, when K.B. said that he did not want to do his homework. Father also “flicked” K.B. on his shoulder, arm, chest, and forehead at his house.

² Project Fatherhood is a psychotherapeutic group that addresses childhood trauma/triggers that impact interpersonal relationships.

When the social worker interviewed K.B. at school, K.B. was scared to tell the truth because father said that if he told the truth, bad things would happen. Father told K.B. not to say anything to his attorney or the judge about what happened between the two of them: “Don’t tell them.”

Mother’s testimony

After every visit with father, K.B. told mother that he was scared of father, that he should not tell the truth, that bad things would happen to him if he told the truth, and that father had promised not to hit K.B. again.

In the family law court, mother was afraid to testify because father had threatened her on several occasions that if she told the judge what had happened, DCFS would put K.B. in foster care.

K.B. seemed to enjoy his telephone conversations with father. However, both before and after the detention hearing, K.B. often said that he did not want to visit father. Sometimes K.B. cried when mother said that he had to visit father.

Mother and father did not have an amicable relationship. She had concerns about physical abuse in father’s home towards K.B., based upon marks she had seen on K.B. and what K.B. had told her.

Sometimes father hit K.B. with a belt or acted like he was going to hit him with a belt. K.B. was afraid when father took his belt off.

Father’s testimony

Before DCFS intervention, mother and father shared custody of K.B.

Father testified that he disciplined K.B. with time outs and taking away privileges. Once he made K.B. stand and hold out

his arms for 15 to 20 seconds, which K.B. said made his arms hurt.

Father denied ever punching K.B. One time, in the car, father reached around to K.B., who was in his booster seat, and slapped the headrest when K.B. talked back; father considered K.B.'s behavior obnoxious.

When K.B. was around five years old, father hit him with a belt.

Father admitted to flicking K.B. with his fingers when K.B. misbehaved. He had "whacked" K.B. on the bottom when he was younger, aged three years old to five years old.

Father did not think that K.B. was scared of him, but he believed that K.B. respected him.

Finally, at the ice skating rink, father grabbed K.B. by the arm because K.B. was about to fall.

Juvenile court orders

After considering all of the evidence and the parties' arguments, the juvenile court sustained the section 300 petition, as amended, under section 300, subdivision (a). In so ruling, the juvenile court expressly found K.B. credible and father not credible.

The juvenile court then proceeded to disposition. Father submitted on the juvenile court's tentative ruling to remove K.B. from his custody and that he participate in Project Fatherhood and anger management. But, father objected to parenting, individual counseling, and drug testing. He also requested permission to speak to K.B. on the telephone.

The juvenile court ordered K.B. removed from father's custody and placed in mother's home under DCFS supervision with the provision of family maintenance services. It ordered

father to participate in a program of counseling, including conjoint counseling with K.B. upon a therapist's recommendation, anger management, and parenting. Father was granted monitored visits at the DCFS office.

The juvenile court denied mother's request for a permanent restraining order, reasoning that mother's allegations were "very general" and "nonspecific," and that K.B. did not need a restraining order because he was in mother's custody and father's visits were monitored at the DCFS office. But, the juvenile court issued a mutual stay away order as to both parents. They were ordered to stay 100 yards away from one another. They were ordered not to "go to each other's jobs, to their car, to the home, or to their person. [¶] If you see her at the mall, you're to stay a hundred yards away from her. [¶] If you run into him at a park, you're to stay a hundred yards away from him." The juvenile court then asked the parents if they understood the stay away order, and they both replied that they did. Father did not object to the order.

The juvenile court also prohibited telephone contact between father and K.B. The juvenile court explained to father: "[T]he reason I'm making that order is because you have attempted to influence [K.B.] to lie to the social worker when the child was interviewed, which caused him grief, sadness, and fear. And I'm not sure that at this point you won't continue to do that, even though the child is not in your custody.

"I know you are angry at your child's testimony today because you say that none of the things he told me in his testimony are true. But I believe him. I found him credible."

Appeal

Father timely appealed.

DISCUSSION

Father contends that the juvenile court abused its discretion by (1) issuing a mutual stay away order, and (2) prohibiting telephone contact between him and K.B.

I. *Stay away order as to both parents*³

A. Forfeiture

1. *Relevant law*

A party may not assert new theories on appeal that he did not raise at the trial court level. (*Ernst v. Searle* (1933) 218 Cal. 233, 240–241.) Under the forfeiture rule, a litigant must preserve any arguments he may have on appeal by raising them below. (*People v. Saunders* (1993) 5 Cal.4th 580, 589–590; *In re S.B.* (2004) 32 Cal.4th 1287, 1293.) “[T]he forfeiture doctrine applies in dependency cases and the failure to object to a disposition order on a specific ground generally forfeits a parent’s right to pursue that issue on appeal.” (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345.)

“[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected. [Citation.]” (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293, fn. omitted.) Although an appellate court has the discretion to excuse forfeiture, this discretion “should be exercised rarely and only in cases presenting an important legal issue.” (*Ibid.*)

³ It is unclear whether the juvenile court issued its order under section 213.5 or the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.). Under either statutory scheme, the juvenile court did not err.

2. *Analysis*

Applying these legal principles, father forfeited his challenge to the stay away order. When the juvenile court issued the stay away order as to both mother and father, it asked if each parent understood those orders. Father replied that he did. He did not object or request a hearing. It follows that he forfeited his objection on appeal.

For the sake of completeness, we turn to the merits of father's argument.

B. Standard of review and applicable law

The purpose of the DVPA “is to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.” (Fam. Code, § 6220.) Pursuant to Family Code section 6300, a court may issue a protective order to restrain any person for the purpose of Family Code section 6220 if there is “reasonable proof of a past act or acts of abuse.”

“Abuse” means: “(a)(1) To intentionally or recklessly cause or attempt to cause bodily injury[;] [¶] (2) Sexual assault[;] [¶] (3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another[;] [¶] (4) To engage in any behavior that has been or could be enjoined pursuant to [Family Code] Section 6320.” (Fam. Code, § 6203.)

Family Code section 6320, subdivision (a), outlines the prohibited behavior and includes, but is not limited to: “disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.” (Fam. Code, § 6320, subd. (a).) ““The plain meaning of the phrase ‘disturbing the peace of the other party’ in

[Family Code] section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party. . . .” (*Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 853.)

We review a protective order for abuse of discretion. (*S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1264–1265.)

Section 213.5, subdivision (a), permits a juvenile court to issue an order “enjoining any person from . . . disturbing the peace of” the dependent child. Section 213.5 has been analogized to those sections of the Family Code that govern restraining orders under the DVPA. (*In re B.S.* (2009) 172 Cal.App.4th 183, 194.)

We review a restraining order issued under section 213.5 for substantial evidence. “If there is substantial evidence supporting the order, the court’s issuance of the restraining order may not be disturbed.” (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211; *In re B.S.*, *supra*, 172 Cal.App.4th at p. 193.)

C. Analysis

Under both the DVPA and section 213.5, ample evidence supports the juvenile court’s issuance of a stay away order for both parents. Father objects to the stay away order on the ground that there is no evidence that he harassed mother. But what father does not seem to understand is that the stay away order was issued for the benefit of K.B. Through the parents’ conduct and treatment of one another, mother and father have “disturbed the peace” of K.B., prompting the issuance of the stay away order. For example, mother stated that she did not report father’s prior physical aggressions because father scared her into thinking that K.B. would go to foster care and father would go to jail. In April 2016, father pleaded with mother and K.B. to

“protect him” and “lie” about the incident at the park. And, K.B. stated to both the social worker and the juvenile court that father’s actions scared him, to the point he cried. From all of this evidence, the juvenile court could reasonably infer that the mutual stay away order was necessary to protect K.B. from mother’s tendency to hide father’s actions and father’s threats to harm K.B., which the juvenile court found credible.

The cases cited by father are readily distinguishable for the simple reason that, in those cases, the Courts of Appeal were considering the propriety of restraining orders issued against one spouse/parent for the protection of another. In *S.M. v. E.P.*, *supra*, 184 Cal.App.4th at page 1268, the Court of Appeal reversed the issuance of a restraining order on the ground that the trial court misunderstood the legal effect of its order. Likewise, in *Sabato v. Brooks* (2015) 242 Cal.App.4th 715, 725, the Court of Appeal affirmed the issuance of a restraining order under the DVPA based upon evidence that the father had asked a friend of the mother to withdraw her request for a restraining order, and the father had obtained a key to the mother’s house, causing her great fear. And in *Phillips v. Campbell*, *supra*, 2 Cal.App.5th at page 853, the Court of Appeal affirmed the issuance of a restraining order based upon substantial evidence that the former husband had disturbed the peace of his former wife. Here, in contrast, no restraining order against father was issued; in fact, the juvenile court expressly denied mother’s request for a restraining order. Instead, in order to protect K.B.’s well-being, the juvenile court issued a mutual stay away order. And, as set forth above, based upon the evidence in the appellate record, the juvenile court did not err in issuing that order.

II. *Order prohibiting telephone contact between father and K.B.*

A. Standard of review

The juvenile court has broad discretion to determine which orders best serve and protect the dependent child's interests. (§§ 245.5; 300.2.) We cannot reverse absent a clear abuse of discretion. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.)

B. Analysis

Ample evidence supports the juvenile court's order prohibiting telephone contact between father and K.B. While some of the calls were "okay," other times father made controlling, manipulative, critical, and bullying remarks. And, father had scared K.B. into not telling the truth about how father had treated K.B. Under these circumstances, the juvenile court acted well within its discretion to prohibit telephone contact for father with K.B.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT